



Western Australia

Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021

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Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021

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Western Australia

Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021

No. 20 of 2021

An Act —

- to amend the *Constitution Act 1889*, the *Constitution Acts Amendment Act 1899* and the *Electoral Act 1907*; and
- to make consequential amendments to the *Local Government Act 1995* and the *Salaries and Allowances Act 1975*; and
- to repeal the *Electoral (Ballot Paper Forms) Regulations 1990*.

[Assented to 24 November 2021]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

Part 2 — *Constitution Act 1889* amended

3. Act amended

This Part amends the *Constitution Act 1889*.

4. Section 47 amended

(1) In section 47 delete “Upon” and insert:

(1) Upon

(2) At the end of section 47 insert:

(2) Subsection (1) does not apply if the general election has wholly failed or has been declared to be absolutely void.

**Part 3 — *Constitution Acts Amendment Act 1899*
amended**

5. Act amended

This Part amends the *Constitution Acts Amendment Act 1899*.

6. Section 5 replaced

Delete section 5 and insert:

5. Constitution of Legislative Council

- (1) The Legislative Council is to consist of 37 elected members.
- (2) Those members are to be returned and sit for the whole of the State.

7. Section 8 amended

In section 8(4) delete “an election held as part of”.

8. Section 18 replaced

Delete section 18 and insert:

18. Constitution of Legislative Assembly

- (1) The Legislative Assembly is to consist of 59 elected members.
- (2) Those members are to be returned and sit for electoral districts.

Part 4 — Electoral Act 1907 amended

9. Act amended

This Part amends the *Electoral Act 1907*.

10. Section 4 amended

- (1) In section 4(1) delete the definitions of:

district

region

voting ticket

voting ticket square

- (2) In section 4(1) insert in alphabetical order:

above the line, in relation to a square on a ballot paper,
has the meaning given in section 128(1)(a);

below the line, in relation to a square on a ballot paper,
has the meaning given in section 128(1)(b);

Council ballot paper means a ballot paper used in a
Council election;

Council election means a general election or other
election for the Council;

district means an electoral district for the election of a
member of the Assembly;

whole of State electorate has the meaning given in
section 16C(1);

- (3) In section 4(1) in the definition of *general election*
paragraph (b) delete “elections in the regions” and insert:

election for the Council

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- (4) In section 4(1) in the definition of *writ* delete “districts, an election in a region or elections in all the regions.” and insert:

districts or a Council election.

- (5) In section 4(3) delete “for a region or an election in or for a region is a reference to a poll or election for the return by a region” and insert:

or election for the Council is a reference to a poll or election for the return by the whole of State electorate

- (6) Delete section 4(4).

- (7) In section 4(5) delete “is a reference to his” and insert:

or the Deputy Electoral Commissioner is a reference to the person’s

- (8) After section 4(5) insert:

(6) A reference in this Act to the functions of a returning officer is a reference to the returning officer’s functions under this Act.

11. Section 9 amended

In section 9 delete “each region and” and insert:

the whole of State electorate and each

12. Section 10 replaced

Delete section 10 and insert:

10. Returning officer for district is deputy returning officer for whole of State electorate

The returning officer for each district is a deputy returning officer for the whole of State electorate.

13. Sections 13 and 14 replaced

Delete sections 13 and 14 and insert:

13. Restriction on resignation of returning officer after issue of writ

- (1) After the issue of a writ for a Council election —
 - (a) the returning officer for the whole of State electorate must not, without the consent of the Electoral Commissioner, resign from office before complying with section 147(1)(b); and
 - (b) the returning officer for any district must not, without the consent of the Electoral Commissioner, resign from office before the returning officer's functions in relation to the election have been completed.
- (2) After the issue of a writ for an election for a district, the returning officer for that district must not, without the consent of the Electoral Commissioner, resign from office before complying with section 147(1)(b).

14. Replacement of returning officer after issue of writ

- (1) If the returning officer for the whole of State electorate dies, resigns, leaves, or is removed, after the issue of a writ for a Council election, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the writ and the election so far as they have yet to be completed.
- (2) If the returning officer for a district dies, resigns, leaves, or is removed, after the issue of a writ for a Council election, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the election so far as they have yet to be completed.
- (3) If the returning officer for a district dies, resigns, leaves, or is removed, after the issue of a writ for an election for that district, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the writ and the election so far as they have yet to be completed.

14. Section 16A amended

In section 16A in the definition of *relevant day* delete "section 16E(a) or (b)" and insert:

section 16E

15. Part IIA Division 2 replaced

Delete Part IIA Division 2 and insert:

Division 2 — Whole of State electorate and electoral districts

16C. Whole of State electorate and representation

- (1) The State is a single electorate (the *whole of State electorate*) for the purposes of the election of members of the Council.
- (2) The whole of State electorate will return the number of members of the Council prescribed by the *Constitution Acts Amendment Act 1899* section 5(1) to serve in the Council.

16D. Electoral districts and representation

- (1) The State must be divided into the same number of electoral districts as the number of members of the Assembly prescribed by the *Constitution Acts Amendment Act 1899* section 18(1).
- (2) Each district will return 1 member to serve in the Assembly.

16. Part IIA Division 3 heading amended

In the heading to Part IIA Division 3 delete “**and regions**”.

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17. Section 16E replaced

Delete section 16E and insert:

16E. Division of State into districts required after each general election for Assembly

The State must be divided into districts in accordance with this Part as soon as practicable after the day that is 2 years after polling day for each general election for the Assembly.

18. Section 16F amended

In section 16F(4):

- (a) in paragraph (b)(iii) delete “fixed;” and insert:

fixed,

- (b) after paragraph (b) delete “and”;
(c) delete paragraph (c);
(d) delete “districts and the boundaries of the regions.” and insert:

districts.

19. Section 16H deleted

Delete section 16H.

20. Section 16I amended

In section 16I delete “regions and” (each occurrence).

21. Section 16K replaced

Delete section 16K and insert:

16K. Effect of notice under s. 16F(2)(f) as to division of State

The division of the State made by the Commissioners in a notice published under section 16F(2)(f) has effect and applies in respect of —

- (a) the first general election for the Assembly held after the day on which the notice is published in the *Gazette*; and
- (b) elections in districts held after that general election and before the first general election for the Assembly held after the day on which another notice is published under section 16F(2)(f).

22. Section 16L deleted

Delete section 16L.

23. Section 16M amended

In section 16M(1) delete “any of the provisions of this Part, other than Division 2, section 16G(3) or (4) or section 16L,” and insert:

the *Constitution Acts Amendment Act 1899* section 5(2) or 18(2) or any of the provisions of this Part, other than section 16G(3) or (4),

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24. Section 17 amended

- (1) Delete section 17(1)(e)(i) and insert:
 - (i) any Council election; and

- (2) In section 17(2):
 - (a) delete “election in the region or” and insert:

Council election, and any election in the
 - (b) delete “enrolled” (2nd occurrence) and insert:

enrolled,

- (3) Delete section 17(4) and insert:
 - (4) A member of the Assembly and the member’s spouse may claim to be enrolled for the district that the member represents and, when so enrolled, are deemed to live in that district.

- (4) In section 17(5):
 - (a) delete “sections 17A and 17B” and insert:

sections 17A, 17B and 19(5),
 - (b) delete “he lives or for the district or sub-district of the region in which he lives.” and insert:

the person lives.

25. Section 17A amended

Delete section 17A(2)(b)(i) and insert:

- (i) any Council election; and

26. Section 17B amended

Delete section 17B(2)(b)(i) and insert:

- (i) any Council election; and

27. Section 19 amended

- (1) In section 19(1) delete “each region.” and insert:

the whole of State electorate.

- (2) Delete section 19(5) and insert:

- (5) All the rolls for the districts form the roll for the whole of State electorate.

- (3) In section 19(6) delete “election in the region of which the district forms part.” and insert:

Council election.

28. Section 25A amended

- (1) In section 25A(1):
- (a) in paragraph (a) delete “rolls for each district and region” and insert:

roll for each district
 - (b) delete paragraph (b) and insert:

(b) to a member of the Council — 2 copies of the latest print of the roll for each district and the prescribed information relating to each elector;
- (2) In section 25A(3) delete “district or in the region of which that district forms part.” and insert:

district.

29. Section 37 amended

In section 37 delete “any region or” and insert:

the whole of State electorate or for any

30. Section 47 amended

In section 47(3)(f) and (g) delete “an election in the region or” (each occurrence) and insert:

a Council election or an election in the

31. Section 48 amended

- (1) In section 48(1) after “the roll” (1st occurrence) insert:

for a district

- (2) In section 48(2)(e)(iii) delete “district or region,” and insert:

district,

32. Section 53 amended

In section 53 delete “an election for the region or” and insert:

a Council election or an election for

33. Section 62C amended

- (1) In section 62C(1) delete the definitions of:

member

related political party

- (2) In section 62C(1) in the definition of *registered political party* delete “parties;” and insert:

parties.

- (3) Delete section 62C(2).

34. Section 62CA inserted

After section 62C insert:

62CA. Membership requirements for qualification as eligible political party

- (1) For the purposes of this Part, 2 or more political parties cannot rely on the same person as a member for the purpose of qualifying or continuing to qualify as an eligible political party.
- (2) If 2 or more political parties purport to rely on the same person as a member for the purpose described in subsection (1), the following provisions apply —
 - (a) the Electoral Commissioner must, in accordance with the regulations, give the person an opportunity to nominate the political party entitled to rely on the person;
 - (b) if the person does not nominate a political party, the person cannot be relied on by any of those political parties.
- (3) The registration of a political party must not be cancelled because of the operation of this section unless the political party is given an opportunity by the Electoral Commissioner, in accordance with the regulations, to change the person or persons on whom it relies.

35. Section 62E amended

In section 62E(4):

- (a) in paragraph (b) delete “of its name on ballot papers for elections — set out the abbreviation; and” and insert:

or acronym of its name on ballot papers for elections —
set out the abbreviation or acronym; and

- (b) delete paragraph (d) and insert:

(d) set out the names and addresses of at least
500 members of the party who are electors and
on whom the party relies for the purpose of
qualifying as an eligible political party; and

- (da) be accompanied by declarations as to
membership of the party, in an approved form,
completed and signed by the members on
whom the party relies for the purpose of
qualifying as an eligible political party; and

- (c) in paragraph (f) delete “document.” and insert:

document; and

- (d) after paragraph (f) insert:

(g) be accompanied by a fee of \$2 000 or any
greater amount that is prescribed.

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36. Section 62H amended

In section 62H(2)(b) delete “as required by section 62E(4)(e) and (f).” and insert:

(other than under section 62E(4)(da)).

37. Section 62HA inserted

After section 62H insert:

62HA. Political party taken not to be registered for certain purposes

Despite the registration of a political party under this Part, the party is taken not to be a registered political party for the purposes of Part IV Division 2, Part VI Division 2A and section 113C, in relation to a general election, if the party’s application for registration was made in the period of 12 months ending on the day of issue of the writ for the general election.

38. Section 62J amended

- (1) In section 62J(1) in the definition of *application name* after “abbreviation” insert:

or acronym

- (2) After section 62J(1) insert:

- (1A) The Electoral Commissioner must refuse to register a political party if it is not an eligible political party.

- (3) In section 62J(3):
- (a) in paragraph (a) delete “6” and insert:

4
 - (b) after paragraph (e) insert:
 - (ea) includes a word of which a letter, other than the first letter, is a capital letter; or
- (4) After section 62J(4) insert:
- (4A) For the purposes of subsection (4), the existing party is related to the party in respect of which the application is made if —
 - (a) one is a part of the other party; or
 - (b) both are parts of the same political party.
 - (4B) Subsection (3)(ea) does not apply if the word is an acronym.
- (5) Delete section 62J(6).

39. Section 62KA inserted

After section 62K insert:

62KA. Annual returns in relation to continued registration

- (1) The secretary of a registered political party must, in the period beginning on 1 June and ending on 30 June each year, lodge a return with the Electoral Commissioner in relation to its continued eligibility for registration under this Part.

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- (2) The return must be —
 - (a) in an approved form; and
 - (b) accompanied by any documents specified in the approved form.
- (3) However, the secretary of a registered political party is not required to lodge a return if, at the beginning of the period referred to in subsection (1), the party has been registered for less than 6 months.

40. Section 62L amended

- (1) In section 62L(2):
 - (a) delete “may” and insert:

must
 - (b) delete paragraph (b) and insert:

(b) the party (not being a parliamentary party) is no longer an eligible political party; or
- (2) After section 62L(2) insert:

(2A) The Electoral Commissioner must cancel the registration of a political party if the secretary of the party fails to comply with section 62KA.

41. Section 62Q amended

In section 62Q(1) delete “62J,” and insert:

62K, in a return under section 62KA,

42. Section 64 amended

In section 64(3) delete “elections in all the regions” and insert:

an election in the whole of State electorate

43. Section 71 amended

(1) In section 71(2) delete “held as part of” and insert:

that is, or is held as part of,

(2) In section 71(5) delete the passage that begins with “In the case of” and ends with “shall be —” and insert:

The date fixed for the polling in a general election for the Council and, in the case of a periodic election for the Assembly, the date fixed for the polling in each election in a district, must be —

(3) In section 71(6):

(a) delete “in the case of a periodic election”;

(b) after “to be fixed” insert:

under subsection (5)

44. Section 74 amended

Delete section 74(a) and (b) and insert:

- (a) in the case of a Council election, to the returning officer and deputy returning officers for the whole of State electorate;

45. Section 75 replaced

Delete section 75 and insert:

75. Advertisement of writ and other matters relating to election

- (1) In this section —
advertise means advertise on the Commission website and in any other way the Electoral Commissioner considers appropriate.
- (2) Having received a writ for an election the Electoral Commissioner must —
 - (a) advertise the day of issue of the writ and the writ's particulars; and
 - (b) as soon as practicable after receiving the writ, advertise the place of declaration of nominations appointed under section 85(1) for the election; and
 - (c) publish whatever information the Electoral Commissioner considers necessary to adequately inform electors about polling places at which the poll will be taken and polling areas declared under section 100(1)(i) in relation to polling places.

- (3) The advertisement under subsection (2)(a) must give at least 10 clear days' public notice of polling day.

46. Section 76 amended

Delete section 76(4) and insert:

- (4) If the time for taking the poll is extended under this section, the Electoral Commissioner must publish notice of the extension —
- (a) on the Commission website; and
 - (b) in any other way the Electoral Commissioner considers appropriate.

47. Section 78 amended

- (1) In section 78(1):

- (a) delete “Nominations may be in an approved form and shall —” and insert:

A nomination must be in an approved form and must —

- (b) in paragraph (b) delete “election.” and insert:

election; and

- (c) after paragraph (b) insert:

- (c) in the case of a Council election, unless the nomination is a party nomination as defined in section 81A(1), be accompanied by declarations in support of the nomination, in an approved form, completed and signed by at

least 250 electors entitled to vote at the election.

(2) After section 78(3) insert:

(4) If the nomination forms for 2 or more candidates are accompanied by a declaration completed and signed by the same elector, the elector cannot be relied on by any of those candidates for the purposes of subsection (1)(c).

48. Section 80 amended

(1) In section 80(1) after “a claim” insert:

(a *group claim*)

(2) In section 80(2A) delete “A claim may be made under subsection (1)” and insert:

A group claim may be made

(3) Delete section 80(2) and insert:

(2) Subject to subsections (3), (4), (5) and (6), the names of candidates nominated for a Council election who have made a group claim must, for the purposes of that election, be included in a group in the order specified in the claim.

(4) In section 80(3):

(a) delete “Two or more” and insert:

All of the

(b) delete “claim has been made, under subsection (1)” and insert:

group claim has been made,

(5) In section 80(4):

(a) delete “claim under subsection (1)” and insert:

group claim

(b) in paragraph (a) delete “claim under that subsection; or” and insert:

group claim; or

(6) In section 80(5) and (6) delete “claim is made under subsection (1)” and insert:

group claim is made

49. Section 81 amended

Delete section 81(2) and insert:

- (2) For the purposes of subsection (1)(b), the required deposit is —
 - (a) in the case of an election in a district — \$250 or any greater amount that is prescribed; or
 - (b) in the case of a Council election — \$2 000 or any greater amount that is prescribed.
- (3) Despite subsection (2)(b), if the candidate is included in a group consisting of more than 5 candidates the required deposit is the amount obtained by dividing \$10 000, or any greater amount that is prescribed, by the number of candidates included in the group.

50. Section 82 amended

Delete section 82(2) and insert:

- (2) The withdrawal of the nomination of a candidate included in a group has no effect unless each other candidate included in the group has consented in writing to the withdrawal.

51. Section 84 amended

Delete section 84(2) and insert:

- (2) If a candidate dies before polling day or on polling day before the close of the poll —

- (a) the deposit made by or on behalf of the candidate must be returned in accordance with subsection (3) or (4); and
- (b) if the election wholly fails because of the death, the deposits made by or on behalf of the other candidates must be returned in accordance with subsection (3) or (4).

52. Section 86 amended

- (1) In section 86(1) delete “an election in a district and not to an election in a region.” and insert:

a single member election.

- (2) In section 86(2b) delete “in a newspaper circulating within the district for which the candidates have nominated.” and insert:

on the Commission website and in any other way the returning officer considers appropriate.

Note: The heading to amended section 86 is to read:

Close of nominations procedure for single member election

53. Section 87 amended

- (1) In section 87(1) delete “an election in a region and not to an election in a district.” and insert:

a Council election where the relevant number is more than one.

- (2) Delete section 87(4) and insert:
- (4) If the candidates are not greater in number than the candidates required to be elected, the returning officer must declare the candidates duly elected.
- (3) Delete section 87(5)(a) and insert:
- (a) the returning officer must, at the place of declaration of nominations, immediately after the close of nominations and before all persons then present —
- (i) make out in respect of each group in which each candidate is endorsed by a registered political party, a slip bearing the names of the candidates in the group, and deal with the slips in accordance with Schedule 2; and
- (ii) make out in respect of each other group, a slip bearing the names of the candidates in the group, and deal with the slips in accordance with Schedule 2;
- (4) In section 87(7) delete “in a newspaper circulating in the region.” and insert:

on the Commission website and in any other way the returning officer considers appropriate.

Note: The heading to amended section 87 is to read:

Close of nominations procedure for Council election where relevant number more than one

54. Section 88 amended

- (1) Before section 88(2) insert:
- (1) If, in a Council election where the relevant number is more than one, a candidate dies during the relevant period and the candidates remaining are not greater in number than the candidates required to be elected, the returning officer must declare the remaining candidates duly elected.
- (1A) In subsection (1) —
relevant period means the period beginning when nominations have been declared and ending before the hour of closing the poll.
- (2) In section 88(2):
- (a) delete “an election” and insert:

a single member election
- (b) in paragraph (ba) after “(b)(ii)” insert:

in relation to an election in a district
- (c) after paragraph (bb) insert:
- (bc) On receipt of a report under paragraph (a)(ii) or (b)(ii) in relation to a Council election the Electoral Commissioner must send a notice, with a copy of the report, to the President.
- (bd) If there is no President, and Parliament is not in session, or if the President is absent from the

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State, a notice under paragraph (bc) may be sent to the Governor in any case.

- (3) In section 88(3) delete “an election in a district” and insert:

a single member election

- (4) In section 88(4) delete “an election in a region” and insert:

a Council election where the relevant number is more than one

55. Section 90 amended

In section 90(1a)(c) delete “officer for any district or region; or” and insert:

officer; or

56. Section 97 amended

In section 97 delete “or 146F” and insert:

or 146E

57. Section 99A amended

In section 99A(2):

- (a) delete “region or”;
- (b) delete “section 87(4) or 88(1) or”.

58. Section 100 amended

- (1) In section 100(1)(a) delete “regions” and insert:

the whole of State electorate

- (2) In section 100(3) delete “all regions,” and insert:

the whole of State electorate,

- (3) In section 100(3a) delete “regions,” and insert:

whole of State electorate,

59. Section 100A amended

Delete section 100A(5) and insert:

- (5) The Electoral Commissioner or the returning officer, as the case requires, must give not less than 48 hours’ notice in writing to each candidate in an election of the time or times at which the presiding officer and another officer will be in attendance at an institution or hospital under subsection (1) for the purposes of the election.

60. Section 100B amended

- (1) Delete section 100B(2a) and insert:

- (2A) The Electoral Commissioner or the returning officer, as the case requires, must give not less than 48 hours’ notice in writing to each candidate in an election of the

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time or times at which the presiding officer and another officer will be in attendance at a place under subsection (1) for the purposes of the election.

- (2) In section 100B(3) delete “subsection (2a),” and insert:

subsection (2A),

61. Section 102A amended

In section 102A(1) delete “any election for the region of which the district forms part.” and insert:

the general election for the Council.

62. Section 113 amended

In section 113(1) delete “prescribed” and insert:

approved

63. Sections 113A and 113B replaced

Delete sections 113A and 113B and insert:

113B. Printing of Council ballot papers

- (1) In printing the ballot papers for a Council election where the relevant number is one —
- (a) the names of the candidates must be printed in the order determined under section 87(6); and

- (b) a square must be printed opposite the name of each candidate.
- (2) Subsections (3) to (6) apply to a Council election where the relevant number is more than one.
- (3) In printing the ballot papers for a Council election for which there is a group —
 - (a) if there is only one group, the names of candidates included in that group must be printed in a group before the names of candidates, if any, not included in that group; and
 - (b) if there are 2 or more groups —
 - (i) in the case of groups in which each candidate is endorsed by a registered political party — the names of candidates included in the groups must be printed in groups in columns sequentially from the left across the ballot papers in the order determined under section 87(5), before the names of candidates, if any, included in any other group; and
 - (ii) the names of candidates included in other groups must be printed in groups in columns sequentially from the left across the ballot papers in the order determined under section 87(5), before the names of candidates, if any, not included in a group;
- and
- (c) the order, within a group, in which the names of candidates in that group are printed must be the order specified in the claim made by them in accordance with section 80(1); and

- (d) the names of candidates, if any, not included in a group must be printed —
 - (i) in a column or, if there are too many names to print in one column, 2 or more columns; and
 - (ii) in the order determined under section 87(6).
- (4) In printing the ballot papers for a Council election for which there are no groups, the names of the candidates must be printed in the order determined under section 87(6).
- (5) In printing the ballot papers for a Council election —
 - (a) a square must be printed opposite the name of each candidate; and
 - (b) if the names of 5 or more candidates have been included in a group —
 - (i) a dividing line must be printed above the squares printed opposite those names; and
 - (ii) a square must be printed above the dividing line and above the squares printed opposite those names.
- (6) If before polling day in a Council election a candidate is declared by a court to be incapable of being elected at that election, the returning officer may take any action in relation to the printing of the ballot papers the returning officer considers necessary as a consequence of the declaration, including the following —
 - (a) causing the ballot papers to be reprinted;
 - (b) causing notations or marks to be made on the ballot papers;
 - (c) again applying the provisions of section 87(6).

64. Section 113C amended

- (1) Delete section 113C(2) and insert:
 - (2) If each candidate in a group applies to have the same name printed under subsection (1), the following requirements apply to the printing of the ballot papers —
 - (a) the name must be printed on the ballot papers adjacent to the name of each candidate in that group;
 - (b) the name must be printed on the ballot papers adjacent to the square, if any, printed above the line for that group.
- (2) Delete section 113C(6) and insert:
 - (6) If each candidate in a group applies under subsection (5), the following requirements apply to the printing of the ballot papers —
 - (a) the word “Independent” must be printed on the ballot papers adjacent to the name of each candidate in that group;
 - (b) the word “Independent” must be printed on the ballot papers adjacent to the square, if any, printed above the line for that group.

65. Section 113D amended

In section 113D(1) delete “voting ticket, notice or application under section 80, 113A” and insert:

notice or application under section 80

66. Section 122A amended

In section 122A(1):

- (a) delete “a region or district” (1st occurrence) and insert:

the whole of State electorate or a district

- (b) in paragraph (a)(i) delete “region of which the district forms part, or the district,” and insert:

whole of State electorate or the district, as the case may be,

- (c) in paragraph (b)(i) delete “region or district” and insert:

whole of State electorate or the district,

- (d) in paragraph (b)(ii):

- (i) delete “region or” (1st occurrence) and insert:

whole of State electorate or the

- (ii) delete “that region or” and insert:

the whole of State electorate or the

- (e) in paragraph (c) delete “a region or district as the case may be” and insert:

the whole of State electorate or a district, as the case may be,

67. Section 123 amended

In section 123(2)(a)(ii) delete “region or district” and insert:

whole of State electorate or the district, as the case may be,

68. Section 128 replaced

Delete section 128 and insert:

128. How ballot paper to be marked by elector

- (1) For the purposes of this section —
 - (a) a square is *above the line* on a ballot paper if the square is printed on the ballot paper under section 113B(5)(b);
 - (b) a square is *below the line* on a ballot paper if the square is printed on the ballot paper under section 113B(5)(a).
- (2) In a single member election where there are only 2 candidates on the ballot paper an elector must mark the elector’s vote on the ballot paper by placing the numeral 1 in the square opposite the name of the candidate for whom the elector votes.
- (3) In a single member election where there are more than 2 candidates on the ballot paper an elector must mark the elector’s vote on the ballot paper by placing the numeral 1 in the square opposite the name of the candidate for whom the elector votes as the elector’s first preference and consecutive numerals from 2 in the squares opposite the names of the remaining candidates so as to indicate the elector’s order of preference for all candidates.

- (4) In a Council election where the relevant number is more than one and there are no squares printed on the ballot papers under section 113B(5)(b), the elector's vote must be marked on the ballot paper as follows —
- (a) if there are more than 20 squares on the ballot paper —
 - (i) the numeral 1 must be placed in the square on the ballot paper opposite the name of a candidate so as to indicate the candidate for whom the elector votes as a first preference; and
 - (ii) at least the consecutive numerals 2 to 20 must be placed in the squares on the ballot paper opposite the names of other candidates so as to indicate the elector's order of preference for other candidates;
 - (b) if there are 20 or fewer squares on the ballot paper —
 - (i) the numeral 1 must be placed in the square on the ballot paper opposite the name of a candidate so as to indicate the candidate for whom the elector votes as a first preference; and
 - (ii) consecutive numerals from 2 must be placed in the squares on the ballot paper opposite the names of the other candidates so as to indicate the elector's order of preference for all candidates.
- (5) Except where an elector follows the procedure set out in subsection (6), in a Council election where the relevant number is more than one and there is at least one square printed on the ballot papers under

section 113B(5)(b), the elector's vote must be marked on the ballot paper as follows —

- (a) if there are more than 20 squares on the ballot paper below the line —
 - (i) the numeral 1 must be placed in the square on the ballot paper below the line opposite the name of a candidate so as to indicate the candidate for whom the elector votes as a first preference; and
 - (ii) at least the consecutive numerals 2 to 20 must be placed in the squares on the ballot paper below the line opposite the names of other candidates so as to indicate the elector's order of preference for other candidates;
 - (b) if there are 20 or fewer squares on the ballot paper below the line —
 - (i) the numeral 1 must be placed in the square on the ballot paper below the line opposite the name of a candidate so as to indicate the candidate for whom the elector votes as a first preference; and
 - (ii) consecutive numerals from 2 must be placed in the squares on the ballot paper below the line opposite the names of the other candidates so as to indicate the elector's order of preference for all candidates.
- (6) In a Council election where the relevant number is more than one, and there is at least one square printed on the ballot papers under section 113B(5)(b), the elector's vote may be marked on a ballot paper by the elector by placing the numeral 1 in a square on the

ballot paper above the line so as to indicate the group for whom the elector votes as a first preference and —

- (a) if there are 2 squares on the ballot paper above the line and the elector wishes to vote for the group to which the other square relates — by placing the numeral 2 in the other square on the ballot paper above the line so as to indicate the elector’s order of preference; or
- (b) if there are 3 or more squares on the ballot paper above the line and the elector wishes to vote for any of the groups to which the other squares relate —
 - (i) by placing the numeral 2 in one of the other squares on the ballot paper above the line so as to indicate the elector’s second preference; or
 - (ii) by placing consecutive numerals from 2 in 2 or more of the other squares on the ballot paper above the line in the elector’s order of preference.

69. Section 140 amended

In section 140(3)(a) delete “section 128(1);” and insert:

section 128(2);

70. Section 141 amended

In section 141(2) and (3) delete “region or” (each occurrence).

71. Section 146B amended

In section 146B(1) delete “a region.” and insert:

the whole of State electorate.

72. Section 146D amended

In section 146D delete “ballot papers used in an election in a region” and insert:

Council ballot papers

73. Sections 146E and 146F replaced

Delete sections 146E and 146F and insert:

146E. Informal ballot papers

- (1) Section 139(a), (c) and (e) apply to and in relation to a Council ballot paper.
- (2) A Council ballot paper is informal, where the relevant number in the election is one —
 - (a) where there are only 2 candidates — if it does not indicate the candidate for whom the elector votes; or
 - (b) where there are more than 2 candidates — if it does not indicate the elector’s preference for all candidates.
- (3) A Council ballot paper is informal, where the relevant number is more than one, if —
 - (a) in the case of a ballot paper described in section 128(4)(a) or (5)(a) — it does not

indicate the elector's preference for at least 20 candidates; or

- (b) in the case of a ballot paper described in section 128(4)(b) or (5)(b) — it does not indicate the elector's preference for all candidates.
- (4) The operation of subsection (2) is subject to section 146EA and the operation of subsection (3) is subject to sections 146EA and 146EB.
 - (5) A Council ballot paper is not informal for any reason other than the reasons enumerated in section 139(a), (c) and (e) and subsections (2) and (3) of this section.
 - (6) A Council ballot paper is not informal under subsection (3) if it is marked in accordance with section 128(6).
 - (7) Without limiting the generality of subsection (5), if, after the nominations have been declared and before or on polling day before the hour of closing the poll in an election where the relevant number is more than one, a candidate dies and the number of candidates remaining is greater than the number of candidates to be elected, a Council ballot paper is not informal by reason only —
 - (a) of the inclusion on the ballot paper of the name of the deceased candidate; or
 - (b) of the marking of any consecutive number opposite that name; or
 - (c) of the omission to place a number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preference.
 - (8) Without limiting the generality of subsection (5), where the vote of an elector is marked on a ballot paper in a manner other than the prescribed manner but the ballot paper clearly indicates the elector's intention as

necessary under subsection (2)(a) or (b) or (3)(a) or (b) and is not informal under section 139(a), (c) or (e), that ballot paper —

- (a) is not informal; and
 - (b) is to be given effect according to the elector's intention.
- (9) In subsection (8) —
- prescribed manner*** means —
- (a) where the relevant number in the election is one and there are only 2 candidates on the ballot paper, the manner required by section 128(2);
 - (b) where the relevant number in the election is one and there are more than 2 candidates on the ballot paper, the manner required by section 128(3);
 - (c) where the relevant number in the election is more than one, the manner authorised by section 128(4)(a) or (b) or (5)(a) or (b), whichever is applicable.

146EA. Formal votes for individual candidates

- (1) In a Council election where the relevant number is one and there are more than 2 candidates, or where the relevant number is more than one and there are no squares printed on the ballot papers under section 113B(5)(b), the following numerals placed in a square printed on a ballot paper must be disregarded —
 - (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
 - (b) if a numeral is missed — any numerals that are higher than the missing numeral.
- (2) In a Council election where the relevant number is more than one and there are one or more squares

printed on the ballot papers under section 113B(5)(b), the following numerals placed in a square printed on a ballot paper below the line must be disregarded —

- (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
- (b) if a numeral is missed — any numerals that are higher than the missing numeral.

146EB. Formal votes for groups

- (1) In a Council election an elector who, in a square printed on a ballot paper above the line, places only a single tick or cross is taken to have written the numeral 1 in the square in accordance with section 128(6).
- (2) In a Council election the following numerals placed in a square printed on a ballot paper above the line must be disregarded —
 - (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
 - (b) if a numeral is missed — any numerals that are higher than the missing numeral.
- (3) If a ballot paper is marked above the line in accordance with section 128(6) and is marked below the line but not in accordance with section 128(5), then, for the purposes of sections 146EC, 146G and 146H, the only squares that are taken to have been marked on the ballot paper are the squares that are marked above the line.
- (4) If a ballot paper is marked above the line, whether in accordance with section 128(6) or not, and is marked below the line in accordance with section 128(5), then, for the purposes of sections 146EC, 146G and 146H, the only squares that are taken to have been marked on

the ballot paper are the squares that are marked below the line.

146EC. Treatment of ballot papers of electors who have voted above the line

- (1) This section applies if —
 - (a) a ballot paper is marked in accordance with section 128(6); and
 - (b) one or more numerals are placed in squares printed on the ballot paper above the line in relation to groups of candidates (each group being a *preferred group*).
- (2) The ballot paper is taken to have been marked as if, instead of the numerals referred to in subsection (1)(b) —
 - (a) each candidate in a preferred group was given a different numeral starting from 1; and
 - (b) candidates in a preferred group were given numerals consecutively, starting with the candidate whose name on the ballot paper is at the top of the group and ending with the candidate whose name is at the bottom of the group; and
 - (c) the order in which candidates in different preferred groups are given numerals is worked out by reference to the order in which the groups were given numerals on the ballot paper, starting with the group marked 1; and
 - (d) when all the candidates in a preferred group have been given numerals, the candidate whose name is at the top of the next preferred group is given the next consecutive numeral.

74. Section 146G amended

(1) Delete section 146G(1) and insert:

(1) As soon as practicable after the close of the poll each assistant returning officer must —

(a) open all ballot boxes received at the assistant returning officer's counting place and reject all informal ballot papers; and

(b) on the other ballot papers —

(i) if there are one or more squares above the line, count the number of first preference votes marked in that square or each of those squares; or

(ii) in a single member election or if there are no squares printed on the ballot papers under section 113B(5)(b), count the number of first preference votes given for each candidate;

and

(c) enclose —

(i) in one packet (the *ballot paper packet*), all the used ballot papers in the assistant returning officer's possession; and

(ii) in another packet, all the unused ballot papers in the assistant returning officer's possession; and

(iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in the assistant returning officer's possession;

and

- (d) seal up those packets, endorse each with a description of its contents and with the name of the counting place and the date of the polling, sign the endorsement, and forward the packets to the deputy returning officer for the district together with —
 - (i) if paragraph (b)(i) applies, a list of the total number of first preference votes marked in the square, or each of the squares, above the line on the ballot papers contained in the ballot paper packet; or
 - (ii) if paragraph (b)(ii) applies, a list of the total number of first preference votes given for each candidate on the ballot papers contained in the ballot paper packet.

- (2) In section 146G(2) delete “packet mentioned in subsection (1)(b)(i) shall” and insert:

ballot paper packet must

- (3) In section 146G(3) delete “subsection (1)(c) shall” and insert:

subsection (1)(d)(i) or (ii) must

- (4) In section 146G(4) delete “subsection (1)(b)(iii)” and insert:

subsection (1)(c)(iii)

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75. Section 146H amended

(1) In section 146H(1):

(a) delete “shall —” and insert:

(the *DRO*) must —

(b) delete paragraph (a) and insert:

(a) open all ballot boxes received from polling places within the district that have not been opened by an assistant returning officer and reject all informal ballot papers; and

(aa) on the other ballot papers —

(i) if there are one or more squares above the line, count the number of first preference votes marked in that square or each of those squares; or

(ii) in a single member election or if there are no squares printed on the ballot papers under section 113B(5)(b), count the number of first preference votes given for each candidate;

and

(c) in paragraph (b) delete “his” (each occurrence) and insert:

the DRO’s

- (d) in paragraph (b) delete “him under section 146G(1)(c); and” and insert:

the DRO under section 146G(1)(d); and

- (e) delete paragraphs (d) and (e) and insert:

- (d) make out —

- (i) if paragraph (aa)(i) applies, a list of the total number of first preference votes marked in the square, or each of the squares, above the line on the ballot papers contained in the packet mentioned in paragraph (b)(i); or
- (ii) if paragraph (aa)(ii) applies, a list of the total number of first preference votes given for each candidate on the ballot papers contained in the packet mentioned in paragraph (b)(i);

and

- (e) enclose —

- (i) in one packet, all the packets made up under section 146G(1)(c)(i) and forwarded to the DRO under section 146G(1)(d), the lists forwarded to the DRO with those packets, the packet made up by the DRO under paragraph (b)(i) and the list made out by the DRO under paragraph (d)(i) or (ii); and
- (ii) in another packet, all the packets made up under section 146G(1)(c)(ii) and forwarded to the DRO under section 146G(1)(d) and the packet made

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up by the DRO under paragraph (b)(ii);
and

- (iii) in another packet, all the packets made up under section 146G(1)(c)(iii) and forwarded to the DRO under section 146G(1)(d) and the packet made up by the DRO under paragraph (b)(iii);

and

- (2) In section 146H(3) delete “subsection (1)(d) shall” and insert:

subsection (1)(d)(i) or (ii) must

76. Section 146I amended

In section 146I(1) delete “sections 146G(1)(b)(i)” and insert:

sections 146G(1)(c)(i)

77. Section 147 amended

- (1) In section 147(2) delete “in the region or district”.
(2) Delete section 147(3).
(3) In section 147(4) delete “any other election in a region,” and insert:

a Council election,

- (4) In section 147(7) delete “(3),”.

78. Section 150 amended

In section 150(2):

- (a) delete “He shall” and insert:

The returning officer must

- (b) delete “in his region or district by himself and by” and insert:

at the election by the returning officer and

79. Section 151 amended

In section 151(b) delete “and the name of the region or the district and the date of the polling,” and insert:

and the date of the polling, and, in the case of an election for a district, the name of the district,

80. Section 152 amended

In section 152(1):

- (a) in paragraph (a) delete “an election other than a full election in a region,” and insert:

a Council election other than a general election for the Council,

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- (b) in paragraph (b) delete “full election in a region, the members elected at the next succeeding full election in the region” and insert:

general election for the Council, the members elected at the next succeeding general election for the Council

81. Section 155 amended

In section 155(2) delete “full election in a region” and insert:

general election for the Council

82. Section 156 amended

Delete section 156(1) and (2) and insert:

- (1) An elector must vote at any election for the whole of State electorate, and at any election for the district for which the elector is enrolled, unless prevented from doing so by absence from the State, or by illness or infirmity, or any physical incapacity on the day of the election.
- (2) As soon as practicable after the election the Electoral Commissioner must ensure that there is prepared a list of the names and addresses of the electors who were enrolled on the roll for the whole of State electorate or the roll for the district, as the case requires, and did not vote at the election.

83. Section 156A amended

In section 156A in the definition of *original election* delete “full election in the region” and insert:

general election for the Council

84. Section 156C amended

In section 156C(1)(a) delete “in at least 2 newspapers circulating generally in the region in respect of which the vacancy has occurred” and insert:

on the Commission website, and in any other way the Electoral Commissioner considers appropriate,

85. Section 156E amended

In section 156E(1) delete “region concerned” and insert:

whole of State electorate

86. Section 163 amended

In section 163(2):

(a) delete “a region or” and insert:

the whole of State electorate or a

(b) delete “such region” (each occurrence) and insert:

that electorate

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87. Section 175D amended

In section 175D(3) delete “section 113B(1)(c)” and insert:

section 113B(3)(c)

88. Section 175LA amended

In section 175LA(2) delete “deemed under section 146F” and insert:

taken under section 146EC(2)

89. Section 213 amended

Delete section 213(3) to (8).

90. Part 9 inserted

Before Schedule 1 insert:

**Part 9 — Transitional provisions for
*Constitutional and Electoral Legislation
Amendment (Electoral Equality) Act 2021***

215. Terms used

In this Part —

amending provisions means the *Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021* Parts 3 and 4;

commencement day means the day on which the *Constitutional and Electoral Legislation Amendment*

(Electoral Equality) Act 2021 section 90 comes into operation;

existing party means a political party that, immediately before commencement day, is a registered political party;

former provisions means this Act and the *Constitution Acts Amendment Act 1899* as they were enacted immediately before commencement day;

previous electoral distribution means the division of the State into regions for the election of members of the Council that took effect on 27 November 2019;

register of political parties has the meaning given in section 62C(1).

216. Vacancies and representation in Legislative Council

Despite the amendments made to this Act and the *Constitution Acts Amendment Act 1899* by the amending provisions, the former provisions and the previous electoral distribution continue to apply in respect of —

- (a) the filling of a vacancy in the Council under sections 156C and 156D before 22 May 2025; and
- (b) the representation of electoral regions by members of the Council elected —
 - (i) before the commencement of the amending provisions; or
 - (ii) as referred to in paragraph (a).

217. Continued registration of existing parties

- (1) An existing party may, in the period of 12 months beginning on commencement day, make an application to the Electoral Commissioner under this section (an ***application for continued registration***).

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- (2) Sections 62E, 62F and 62G apply for the purposes of this section as if references in those sections to an application or an application for registration were references to an application for continued registration.
- (3) The Electoral Commissioner must cancel the registration of an existing party if —
 - (a) the existing party does not make an application for continued registration within the period referred to in subsection (1); or
 - (b) the Electoral Commissioner, after considering an application for continued registration made by the existing party within that period, is satisfied that the application would have been refused under section 62J if the application had been an application for the registration of the existing party.
- (4) Sections 62L(3) to (6) and 62N apply to and in relation to a cancellation of registration under subsection (3) as if it were a cancellation of registration under section 62L (other than because of section 62L(2)(d)).
- (5) If the Electoral Commissioner does not cancel the registration of an existing party under subsection (3), the Electoral Commissioner must replace the information and documents in the register of political parties relating to the existing party with —
 - (a) the information set out in the existing party's application for continued registration (other than under section 62E(4)(d) as applied by subsection (2)); and
 - (b) any document accompanying the existing party's application for continued registration (other than under section 62E(4)(da) as applied by subsection (2)).

- (6) Nothing in this section prevents the cancellation of the registration of an existing party under section 62L.

91. Schedule 1 heading amended

In the heading to Schedule 1 delete “**Legislative**”.

92. Schedule 1 amended

- (1) Delete Schedule 1 clause 8 and insert:

8. Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes must be excluded and —
- (a) if the ballot papers of the excluded candidate express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate, the total number of those ballot papers must be transferred, each ballot paper at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate;
 - (b) if votes have been obtained by the excluded candidate on a transfer from a particular candidate under this Schedule and ballot papers transferred to the excluded candidate from that candidate express the next available preference for a particular continuing candidate —
 - (i) the total number of those ballot papers must be multiplied by the transfer value at which the votes were so transferred to the excluded candidate; and

- (ii) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers must be transferred to the continuing candidate.
 - 8A. If votes have been obtained by the excluded candidate on transfers from 2 or more candidates under this Schedule, clause 8(b) must be applied to those transfers in the order in which they were received, the earliest transfer being dealt with first.
 - 8B. A ballot paper must be set aside as exhausted if it is found that the ballot paper expresses no preference for any continuing candidate.
- (2) In Schedule 1 clause 9:
- (a) delete “on the completion” and insert:

as a result
 - (b) delete “the remaining votes of the excluded candidate have been transferred in accordance with clause 8(a) and (b) to continuing candidates.” and insert:

clause 8(a) and (b) have been applied to the remaining votes of the excluded candidate.
- (3) In Schedule 1 clause 10:
- (a) delete “transfer of all” and insert:

application of clause 8(a) and (b) to

- (b) delete “his votes shall be transferred in accordance with clause 8(a) and (b).” and insert:

clause 8(a) and (b) must be applied to the continuing candidate’s votes.

- (4) Delete Schedule 1 clause 13 and insert:

13. Despite any other provision of this Schedule, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, each of those candidates is elected regardless of whether the candidate has received a number of votes below, equal to or greater than the quota.

- (5) After Schedule 1 clause 19 insert:

20. In a case to which section 146E(7) applies, a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in the order of the elector’s preference, and the numbers indicating any subsequent preferences, if any, must be taken to be altered accordingly.

93. Various references to “and regions” deleted

In the provisions listed in the Table delete “and regions”.

Table

s. 16A def. of <i>relevant day</i>	s. 16F(1)
s. 24(3)	s. 51(2)

s. 94

94. Various references to “an election in a region” replaced

In the provisions listed in the Table delete “an election in a region” and insert:

a Council election

Table

s. 4(1) def. of <i>election</i>	s. 4(1) def. of <i>relevant number</i>
s. 4(1) def. of <i>single member election</i> par. (b)	s. 80(1)
s. 81A(4)	s. 84(1)(a)
s. 89(2)	s. 99G(3)
s. 114(1)(b)	s. 146A(1) and (2)
s. 146B(1)	s. 147(1a)(b)
s. 156A def. of <i>vacancy</i> par. (b) and (c)	s. 175LF(2)
Sch. 1 cl. 1	

Part 5 — Consequential amendments and repeal

Division 1 — Other Acts amended

95. *Local Government Act 1995* amended

(1) This section amends the *Local Government Act 1995*.

(2) In section 4.1A(1):

(a) delete “a district or region” and insert:

the whole of State electorate or a district

(b) delete “that district or region.” and insert:

that electorate or district.

96. *Salaries and Allowances Act 1975* amended

(1) This section amends the *Salaries and Allowances Act 1975*.

(2) In section 6(6):

(a) delete “or electoral region”;

(b) delete “districts and electoral regions,” and insert:

districts,

**Constitutional and Electoral Legislation Amendment (Electoral Equality)
Act 2021**

Part 5 Consequential amendments and repeal

Division 2 Regulations repealed

s. 97

Division 2 — Regulations repealed

97. *Electoral (Ballot Paper Forms) Regulations 1990* repealed

The *Electoral (Ballot Paper Forms) Regulations 1990* are repealed.



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